Group III: claims10-15, directed to a method of preventing or treating West Nile virus with ribavirin and interferon alpha-2b;

Group IV: claim 16, directed to a method of preventing or treating St. Louis, Japanese or Murray Valley encephalitis with ribavarin;

Group V: claim 16, directed to a method of preventing or treating St. Louis, Japanese or Murray Valley encephalitis virus with interferon alpha-2b; and

Group VI: claim 16 directed to a method of preventing or treating St. Louis, Japanese or Murray Valley encephalitis with ribavirin and interferon alpha-2b.

In response, Applicants provisionally elect with traverse the subject matter of Group II, claims 5-9, directed to methods of preventing or treating West Nile virus with interferon alpha-2b. However, Applicants expressly reserve the right to pursue the non-elected embodiments at a later time in one or more divisional applications and/or continuation applications.

The Examiner's alleged basis for the restriction between the inventions is that the claims in Groups I-VI have separate utility. The Examiner asserts with regard to Groups I-III that ribavirin has utility in treatment of hepatitis C, while interferon alpha-2b has separate utility in treatment of hairy cell leukemia, malignant melanoma, or follicular lymphoma. The Examiner makes the same argument for Groups IV-VI as to separate utility--ribavirin has utility in treatment of hepatitis C, while interferon alpha-2b has separate utility in treatment of hairy cell leukemia, malignant melanoma, or follicular lymphoma.

Applicants respectfully disagree, and submit that the Examiner has not met the burden of establishing two or more independent and distinct inventions claimed in one application under 35 U.S.C. § 121. For example, the Examiner presents the same arguments that the claims in Groups I-III and IV-VI have separate utility-- ribavirin has utility in the treatment of hepatitis C, while interferon alpha-2b has separate utility in treatment of leukemia, malignant melanoma, or lymphoma, yet these diseases--hepatitis C, leukemia, malignant melanoma or lymphoma are not recited in any of the claims.

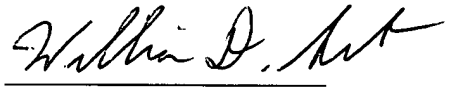
Thus, the distinction between the claims in Groups I-VI is unclear and the Examiner has not established that the inventions in Groups I-VI are independent and distinct.

Moreover, the Examiner would almost certainly cite the same reference in one group against the other groups. Applicants submit that separate searches for each of the alleged groups would be substantially duplicative, and the Examiner has not demonstrated that a search directed to one group is unreasonable or would present an undue burden on the patent office. Accordingly, Applicants respectfully request the restriction requirement to be withdrawn.

The Examiner is invited to call Applicants' attorney at the telephone number listed below to clarify this restriction requirement.

If additional fees are deemed necessary for the filing of this response, authorization is hereby given to charge any such fees to Deposit Account No. 11-0171.

Respectfully submitted,



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